161 U.S. 483

161-483.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 81.

HARVEY SPALDING, PLAINTIFF IN ERROR,

vs.

WILLIAM F. VILAS

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED JANUARY 15, 1892.

(14,965.)

(14,965.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 81.

HARVEY SPALDING, PLAINTIFF IN ERROR,

vs.

WILLIAM F. VILAS

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

INDEX.

	Original.	Print.
Declaration	1	1
Summons	7	5
Marshal's return	8	5
Demurrer to declaration	9	5
Note of issue	10	6
Order sustaining demurrer	11	6
Judgment	12	7
Appeal to general term	12	7
Judgment in general term	13	7
Order for rehearing	13	7
Hearing and submission	14	8
Order reaffirming judgment	15	8
Bond for writ of error	15	8
Writ of error	17	9
Citation and acceptance of service	18	10
Certificate to record	19	11

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 16, 1895.

1 *Declaration, &c.*

Filed Feb. 28, 1889.

Supreme Court of the District of Columbia.

HARVEY SPALDING
vs.
WILLIAM F. VILAS. } At Law. No. 29418.

The plaintiff, who is, and has been for more than twenty years, a resident and citizen of the District of Columbia, and during that time an attorney-at-law, practicing in the city of Washington, in said District, sues the defendant, William F. Vilas, who from March —, 1885, until January 16, 1888, was the Postmaster General of the United States, and says:

That in or about the year 1871 he, the said plaintiff, was employed by a considerable number of persons, who were and had been postmasters at different post-offices in the United States, to obtain a review and re-adjustment of their salaries, in accordance with the provisions of the act of Congress of June 12, 1886, relating thereto, and which enacted that when the quarterly returns of the postmasters of the third, fourth, and fifth classes, mentioned therein showed that their salary allowed is 10 per centum less than they would be on the basis of commissions under the act of June 22, 1854, fixing their compensation, they were entitled to have their compensation reviewed and re-adjusted under the provisions of said act of 1854, by reason of which a large number of such post-

2 masters had just and valid claims against the United States arising from such re-adjustment, and a large number of them entered into written contracts with the plaintiff, employing him, and providing a reasonable compensation to him for procuring the same, and gave to him written powers of attorney to act for them in the prosecution of said claims and to receive the drafts which might be issued in payment thereof.

That upon making and filing applications at the Post Office Department in behalf of his clients for such re-adjustment and review, the same was denied, notwithstanding such act of Congress, whereupon plaintiff took measures to procure mandatory legislation by Congress and appropriations necessary, pressing such legislation by all lawful means in his power in the different Congresses from 1871 to 1886, giving to such efforts a great amount of his time, and in the meantime procuring similar contracts and applications and powers of attorney from several thousands of postmasters of the said classes throughout different parts of the United States, and filing in the Post Office Department such applications and powers of attorney, and expending a good many thousands of dollars in building up a business in the collection of such claims, relying upon the justice thereof, and finally obtaining the passage of the acts of Congress of March 3, 1883, requiring the Postmaster General of the

United States, upon proper presentation of such claims, to compute and pay the same; an act of Congress of July 7, 1884, making appropriations for the payment of such claims; a further act of Congress of March 3rd, 1885, making a like appropriation; and a similar act of Congress of August 4th, 1886, making further appropriations therefor, all of which acts were brought about in consequence of the continual and persistent efforts of the plaintiff, under which acts the plaintiff proceeded to make out papers and proofs
3 for the presentation of such claims in behalf of his clients, and filed the same, with powers of attorney to him, as aforesaid, in the said Post Office Department, and commenced the collection of the same, a large number of said claims prior to March, 1885, and which were good and valid, being, however, repudiated by the Post Office Department, and the prosecution of such claims being made more difficult by great hostility of the persons managing such department to the collection of this class of claims.

Soon after the 3d day of March, 1885, the plaintiff made application to the defendant, in his capacity of Postmaster General of the United States, to adjust and pay the said claims which had been disallowed, and also to review and re-adjust claims of the same character which had not before been presented, which applications were refused, and an acrimonious controversy arose between the said defendant and this plaintiff in relation thereto, the said defendant, among other things, endeavoring to obtain legislation by Congress to impair and destroy the rights of the plaintiff under the said contracts, in which, however, he failed; but to further harass the plaintiff, and to injure him in his good name and in his business, without any good reason therefor, and with malicious intent, the said defendant interposed all possible obstacles to the collection of said claims, and undertook to induce the clients of the plaintiff to repudiate the contracts they had made, and for such purpose, and with such malicious intent, caused the drafts for the payment of such claims to be sent directly to the claimants, and for the malicious purpose of causing the claimants to disregard the contracts they had made with the plaintiff for fees, and to cause them to believe that the same were null and void, and that plaintiff had rendered them no service, and that he was attempting falsely to claim for valuable services rendered under said contracts, falsely claimed to be valid, and
4 using his official character for such purpose, thus placing the plaintiff before the country as a common swindler; and to bring him into public scandal, infamy, and disgrace, and to injure his business, with each letter of transmittal of drafts to said claimants caused to be issued and sent to them, between September, 1886, and January 17, 1888, to a great number, to wit, four thousand of the said claimants, clients of the plaintiff, residing in the States of New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, West Virginia, Wisconsin, and the Territories of Utah, Washington, and Wyoming, the circular, of which the following is a copy, the same being dated and addressed to each claimant, respectively, stating the sum transmitted and the name and post-office of such claimant, respectively,

and having added thereto, in print, sections 8 of the act of August 4th, 1886, and section 3477 of the Revised Statutes of the United States, to wit:

POST OFFICE DEPARTMENT,
OFFICE OF THE THIRD ASSISTANT POSTMASTER GENERAL,
DIVISION OF FINANCE,
WASHINGTON, D. C., —— —, 188–.

SIR: Herewith inclosed you will find warrant payable to your order for $—, which is in full liquidation of your claim for the balance unpaid of the re-adjusted salary of —— ——, postmaster at ——, State of ——.

In transmitting it I am directed by the Postmaster General to advise you that in the act of 1883, which provided for re-adjustments of salary, the Congress directed that all checks or warrants should be made payable to the claimants and transmitted direct to them, and that in the appropriation and enactment on this subject by Congress, a copy of which is printed at the foot of this note, the direction was repeated. This was done because no attorney's services were necessary to the presentation of the claim before the department, and the Congress desired all the proceeds to reach
5 the person really entitled thereto. After a claim of this character is filed in the department its examination and the readjustment of the salary, if found proper, are made directly from the books and papers in the department by its officers, and without further evidence.

You are further advised that by section 3477 of the Revised Statutes, a copy of which is also printed at the foot of this note, any transfer of this claim or power of attorney for receiving payment of this warrant is null and void.

Yours respectfully,
J. H. HARRIS,
Third Assistant Postmaster General.

—— ——,
—— ——.

See statutes referred to on next leaf.

5—1883.

The said circular is false, and intended to deceive the said claimants; and they were deceived, and believed what the defendant meant and intended, as hereinbefore stated, of and concerning the plaintiff, and in the following respects, to wit:

That in the act of 1883, which provided for re-adjustments of salary, the Congress directed that all checks or warrants should be transmitted direct to the claimants, and that such direction was repected in the act of 1886.

That this was done because no attorney's services were necessary to the presentation of the claim before the department.

That this was done because the Congress desired all the proceeds to reach the person really entitled thereto.

The statement that claims of this character, after being filed in

the department, were examined and re-adjusted directly from
6 the books and papers in the department, without further evidence, besides being untrue, in many cases was unnecessary to protect the interests of the Government or the claimant, was not required by law, and was maliciously intended to cause the claimants to believe that the plaintiff's claim for valuable services was false and fraudulent, and the same was inserted for no other purpose.

The reference to section 3477 in said circular, and the printing of the whole of said section, was for the malicious purpose only of causing the claimants to believe that the said contracts for fees, before suggested in said circular, were null and void according to a pretended official ruling of the Post Office Department; while in truth and in fact the said section had no reference to any contracts of the kind, nor to contracts of the character hereinbefore described as made by the plaintiff with such claimants.

All of said false statements or irrelevant references and printing of said section 3577 of the Revised Statutes were unnecessary, malicious, and without reasonable or probable cause, and intended to deceive the claimants, and to thereby induce them to repudiate the contracts they had made with the plaintiff, and they understood said circular as meant and intended, as herein stated, of and concerning the plaintiff; and they were deceived, and did repudiate their said contracts by reason thereof, to the great injury to the good name of the plaintiff and to his business, and for no other purpose.

Soon after commencing to issue such circulars the attention of the defendant was called by the plaintiff to the fact that the issuing of such circulars produced great injury to his business and was unjust towards him; but the said defendant, notwithstanding, maliciously continued the said issue, so long as he held the position of Postmaster General of the United States, to all the claimants he could reach, and to the number of four thousand, as aforesaid, for
7 no other purpose than to continue the said injury to this plaintiff.

In consequence of the said acts of the defendant the plaintiff has been put to great trouble and expense in enforcing the said contracts, has lost the benefit of many of the same, at an expense and loss of $25,000; and, besides, has suffered in injury to his good name and reputation to the amount of $75,000.

And the plaintiff claims judgment for $100,000, besides costs and disbursements.

W. WILLOUGHBY,
Attorney for Plaintiff.

The defendant is to plead hereto on or before the first day of the first special term of the court occurring twenty days after service hereof; otherwise judgment.

W. WILLOUGHBY,
Attorney for Plaintiff.

Summons.

Issued Feb'y 28, 1889.

In the Supreme Court of the District of Columbia, the 28 Day of February, 1889.

HARVEY SPALDING, Plaintiff,
vs.
WILLIAM F. VILAS, Defendant. } At Law. No. 29418.

The President of the United States to the defendant, Greeting:

You are hereby commanded to appear in this court on the
8 first day of its first special term, occurring 20 days after service of this writ on you, to answer the plaintiff's suit and show why he should not have judgment against you for the cause of action stated in his declaration.

Witness E. F. Bingham, chief justice.

R. J. MEIGS, *Clerk*,
[SEAL.] By J. R. YOUNG,
Assistant Clerk.

WILLOUGHBY, *Attorney.*

NOTE.—The special terms of the court commence on the first Tuesday of every month except August, in which month there is no term of the court.

Marshal's Return.

Served copies of the declaration, notice to plead, and this summons on the defendant the 28th day of February, 1889.

A. A. WILSON, *Marshal.*

9 *Demurrer to Declaration.*

Filed April 2, 1889.

In the Supreme Court of the District of Columbia.

HARVEY SPALDING, Plaintiff,
vs.
WILLIAM F. VILAS, Defendant. } At Law. No. 29418.

The defendant says that the plaintiff's declaration is bad in substance.

JNO. BLAIR HOGE,
H. J. MAY,
Attorneys for Defendant.

NOTE.—Among the matters of law relied upon and to be argued in support of the above demurrer is that the plaintiff's pretended

damages are alleged to flow from certain acts of the defendant as the Postmaster General of the United States, all of which acts, as is apparent upon the face of the declaration, were done and performed by the defendant in the exercise of a lawful discretion in him vested as such Postmaster General, for the exercise of which said discretion, even wilfully and maliciously, as alleged in said declaration, the defendant is not liable at the private suit of the plaintiff.

10 *Note of Issue.*

Filed April 16, 1889.

Supreme Court of the District of Columbia.

HARVEY SPALDING
vs.
WILLIAM F. VILAS. } At Law. No. 29418.

Attorney for plaintiff, W. Willoughby; attorneys for defendant, John Blair Hoge & H. J. May.
Last pleading filed April 2d, 1889.

The clerk will please place the above cause on the calendar for the next term.

W. WILLOUGHBY,
Att'y for Pl'ff.

Court Proceedings.

Proceedings before the supreme court of the District of Columbia, holding a circuit court and special term in and for said District, commencing the first Tuesday, it being the 7th day, of January, A. D. 1890.

11 TUESDAY, *January 7th, A. D.* 1890.

By order of Martin V. Montgomery, one of the justices of said supreme court, presiding, the court is opened by proclamation of the marshal pursuant to rule of court.

* * * * * * *

WEDNESDAY, *March 5th, A. D.* 1890.

Session resumed pursuant to adjournment, Montgomery, justice, presiding.

* * * * * * *

HARVEY SPALDING, Plaintiff,
vs.
WILLIAM F. VILAS, Defendant. } At Law. No. 29418.

Upon hearing the defendant's demurrer to the plaintiff's declaration it is considered that said demurrer be, and the same is hereby, sustained.

WEDNESDAY, *March 12th, A. D.* 1890.

Session resumed pursuant to adjournment, Montgomery, justice, presiding.

* * * * * * *

12 HARVEY SPALDING, Plaintiff, *vs.* WILLIAM F. VILAS, Defendant. } At Law. No. 29418.

The demurrer to the declaration in this cause having been sustained on the 5th instant, on motion of plaintiff's attorney, judgment is hereby entered thereon; therefore it is considered that the plaintiff take nothing by his suit, and that the defendant go thereof without day and recover against said plaintiff the costs of his defense, taxed at $—, and have execution thereof; from which the plaintiff prays an appeal.

Proceedings in General Term.

MONDAY, *October 6th*, 1890.

Proceedings before the supreme court of the District of Columbia, sitting in general term, beginning the first Monday, October 6th, 1890.

Present, presiding: Chief Justice Bingham and Justices Hagner, Cox, James, & Bradley.

* * * * * * *

13 MONDAY, *December 22d*, 1890.

Session resumed pursuant to adjournment.
Present: Justices Hagner, Cox, and James.

HARVEY SPALDING *vs.* WILLIAM F. VILAS. } Law. No. 29418.

Opinion by Justice Cox Sustaining Demurrer.

Whereupon, because it appears to the court here that the demurrer herein by defendant filed is well taken, it is ordered that the same be, and hereby is, sustained at the cost of the plaintiff, and that defendant have execution thereof.

SATURDAY, *January 3d*, 1891.

Session resumed pursuant to adjournment.
Present: Justice Hagner and Justices Cox and James.

* * * * * * *

HARVEY SPALDING *vs.* WILLIAM F. VILAS. } At Law. No. 29418.

14 Rehearing of this cause is hereby authorized by the court.

MONDAY, *October* 5, 1891.

Proceedings before the supreme court of the District of Columbia, sitting in general term, beginning the first Monday, October 5, 1891.

Present, presiding: Chief Justice Bingham and Justices Hagner, Cox, James, and Bradley.

MONDAY, *October* 12, 1891.

Session resumed pursuant to adjournment.
Present: Chief Justice Bingham & Justices Cox and James.

* * * * * * *

HARVEY SPALDING
vs.
WILLIAM F. VILAS. } At Law. No. 29418.

This cause, coming on to be heard, is argued behalf of appellant, the plaintiff, by Mr. Willoughby, and behalf of defendant by Mr. Cole, and in answer behalf of appellant by A. A. Birney and submitted.

15 MONDAY, *October* 19, 1891.

Session resumed pursuant to adjournment.
Present: Chief Justice Bingham and Justices Cox & James.

* * * * * * *

HARVEY SPALDING
vs.
WILLIAM F. VILAS. } At Law. No. 29418.

Opinion of the court by Mr. Justice Cox, reaffirming the action of the court in general term had in this case on the 22d December, 1890.

Bond for Writ of Error.

Filed Dec. 17, 1891.

In the Supreme Court of the District of Columbia, the 17th Day of December, 1891.

HARVEY SPALDING
vs.
WILLIAM F. VILAS. } At Law. No. 29418. In Error.

Know all men by these presents that we, Harvey Spalding, James H. Spalding, and Edwin W. Spalding, are bound unto the above-named William F. Vilas in the sum of two hundred dollars
16 to be paid to the said William F. Vilas, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 17th day of December, 1891.

Whereas the above-named Harvey Spalding hath prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above suit by the supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is that if the above-named Harvey Spalding shall prosecute his said writ of error to effect and answer all damages and costs if he shall fail to make good his plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HARVEY SPALDING. [SEAL.]
JAMES H. SPALDING. [SEAL.]
EDWIN W. SPALDING. [SEAL.]

Sealed and delivered in presence of—

——— ———.

Approved:

E. F. BINGHAM, *C. J.*

17 *Writ of Error to the Supreme Court of the United States.*

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the chief justice and justices of the supreme court of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is in the said court, before you, between Harvey Spalding, plaintiff, and William F. Vilas, defendant, being No. 29418, at law, a manifest error hath happened, to the great damage of the said plaintiff, as by his complaint appears, and it being fit that the error, if any hath happened, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, therefore you are hereby commanded, if judgment be therein given, under your seal, distinctly and openly, to send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington within thirty days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 17th day of December, in the year of our Lord 1891, and of the Independence of the United States the one hundred and sixteenth.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk.*

18 *Citation to the Supreme Court of the United States.*

The United States of America to William F. Vilas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the District of Columbia, wherein Harvey Spalding is plaintiff and you are defendant, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected, so that speedy justice be done the parties in that behalf.

Witness Edward F. Bingham, chief justice of the said supreme court of the District of Columbia, in the year of our Lord one thousand eight hundred and ninety-one.

Dated 17th December, 1891.

E. F. BINGHAM,
Chief Justice.

Service of above writ of error & citation admitted this 17th day of December, 1891.

C. C. COLE,
Att'y for Def't.

19 AUTHENTICATION OF RECORD.

Clerk's Certificate.

CLERK'S OFFICE,
SUPREME COURT OF THE DISTRICT OF COLUMBIA.

I, John R. Young, clerk of the said court, do hereby certify that the writings annexed to this certificate are true copies of originals on file and of record in said office, and that said originals together constitute the record of the proceedings of said court in this cause.

Witness my hand and the seal of said court this 9th day of January, 1892.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk,*
By H. W. HODGES,
Assistant Clerk.

Justice's Certificate.

I, E. F. Bingham, chief justice of said court, do certify the foregoing attestation by J. R. Young, clerk of the said court, to be in due form.

Witness my hand and seal this 9th day of Jan'y, 1892.

E. F. BINGHAM,
Chief Justice. [SEAL.]

Clerk's Certificate to Justice's Official Character.

I, J. R. Young, clerk of said court, hereby certify that E. F. Bingham, whose genuine signature is subscribed to the foregoing certificate, was at the time of signing and attesting the same chief justice of said court, duly commissioned and qualified.

Witness my hand and the seal of said court this 9th day of January, 1892.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By H. W. HODGES,
Assistant Clerk.

[Endorsed:] Authentication of record.

Endorsed on cover: Case No. 14,965. District of Columbia supreme court. Term No., 81. Harvey Spalding, plaintiff in error, *vs.* William F. Vilas. Filed January 15th, 1892.

NOV 9 1895
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1895.

HARVEY SPALDING, *Plaintiff in Error,*
vs.
WILLIAM F. VILAS, *Defendant in Error.*
No. 81.

Points and Brief of Plaintiff in Error.

W. WILLOUGHBY,
Counsel for Plaintiff in Error.

H. L. McQUEEN, PRINTER.

Supreme Court of the United States.

October Term, 1895.

HARVEY SPALDING, Plaintiff in Error,
vs.
WILLIAM F. VILAS, Defendant in Error. } No. 81.

POINTS AND BRIEF OF PLAINTIFF IN ERROR.

Statement of Case.

I.

This case comes to this court upon a writ of error to the Supreme Court of the District of Columbia. It was before the court below upon demurrer to the declaration, which demurrer was sustained both in the special and general term, and the plaintiff in the court below is the plaintiff in error here.

The opinion of the court below was not filed and it is not possible to state it here except from recollection and in a very general way.

II.

The declaration alleges that the plaintiff is and has been for many years an attorney, practicing in the City of Washington and that the defendant was Postmaster-General of the U. S. from March, 1885, until January 16, 1888 (p. 1).

That under section 8 of the act of June 12, 1866, many Postmasters throughout the United States had become entitled to a readjustment of their salaries which would entitle them to certain amounts against the United States, which were unpaid (p. 1.)

That he had written contracts with several thousands of such postmasters, by which he was employed to prosecute such claims and to have reasonable compensation therefor, and had powers of attorney to act for them in the prosecution ("procuring" in record by misprint) of such claims and to receive the warrants to be issued in payment thereof, which powers of attorney he had filed in the Post Office Department (p. 1).

That these re-adjustments were denied by the Post Office Department in consequence of which the plaintiff took measures to procure mandatory legislation by Congress, and appropriations necessary through several Congresses, and finally obtained such legisla-

tion, but that such legislation and the prosecution of such claims were made very difficult by reason of the great hostility of the persons managing such Department to the collection of this class of claims (pp. 1 and 2). That soon after the 3d of March, 1885, he applied to the defendant to adjust and pay such claims, which application was refused, and an acrimonious controversy arose between him and the defendant in relation thereto, and the defendant endeavored to obtain legislation to impair and defeat his rights, and to further harass the plaintiff and to injure him in his good name, and in his business without any good reason therefor, and with malicious intent the said defendant interposed all possible obstacles to the collection of said claims, and undertook to induce the clients of the plaintiffs to repudiate the contracts they had made, and for such purpose and with such malicious intent, caused the drafts or warrants for the payment of such claims to be sent directly to the claimants, and for the malicious purpose of causing the claimants to disregard the contracts they had made with the plaintiff for fees, and to cause them to believe that the same were null and void, and that plaintiff had rendered them no service, and that he was attempting falsely to claim for valuable services rendered under said contracts, falsely claimed to be valid, and using his official character for such purpose, thus placing the plaintiff before the country as a common swindler; and to bring him into public scandal, infamy, and disgrace, and to injure his business, with each letter of transmittal of drafts to said claimants caused to be issued and sent to them, between September, 1886, and February, 1888, to a great number, to wit, four thousand of the said claimants, clients of the plaintiff, a certain printed circular of which a copy is given in the declaration calling attention to the enclosure, advising the recipient that no attorney's services were necessary to the prosecution of the claim before the Department, that Congress desired all the proceeds to reach the person really entitled thereto, that all re-adjustments were made directly from the books and papers in the Department and without further evidence, and calling attention to section 3477 of the Revised Statutes of the United States (pp. 2, 3). That this circular was false in several respects and intended to deceive the claimants, and they were deceived and believed what the defendant meant and intended of and concerning the plaintiff in the following among other respects, that no attorney's services were necessary to the prosecution of the claims, that this was done because Congress desired to reach the persons entitled thereto, that claims were adjusted without further evidence than what was shown by the books and papers in the Department. Said section 3477 had no reference to contracts of the kind between an attorney and client, but was cited to make complainant's clients believe contrary to the truth that such contracts were null and void (pp. 3, 4).

All of said false statements or irrelevant references and printing

of said Section 3477 of the Revised Statutes were unnecessary, malicious, and without reasonable or probable cause, and intended to deceive the claimants, and to thereby induce them to repudiate the contracts they had made with the plaintiff, and they understood said circular as meant and intended, as herein stated, of and concerning the plaintiff; and they were deceived, and did repudiate their said contracts by reason thereof, to the great injury to the good name of the plaintiff and to his business, and they were made for no other purpose (p. 4).

The plaintiff called the attention of the defendant to the fact that the issuing of such circulars produced great injury to his business and was unjust to him and caused his clients to break their contracts with him, but the defendant, notwithstanding, maliciously continued such issue so long as he held the position of Postmaster-General of the United States to the number of four thousand (p. 4).

For these acts of the defendant the plaintiff had been put to great trouble and expense and loss to the amount of $25,000 and had suffered injury to his good name and reputation to the amount of $75,000, and he claimed judgment against the defendant for $100,000 (p. 4).

To this declaration the defendant demurred, specifying as the ground of the demurrer that all of such acts of the defendant were performed in the exercise of a lawful discretion vested in him as Postmaster-General and that he could not be held accountable therefor at the private suit of the plaintiff, even if done wilfully and maliciously.

III.

Assignments of Error.

1st. The court below erred in not holding that the declaration charges substantially that the defendant committed a libel against the plaintiff as an attorney, and that the plaintiff was injured thereby in his reputation and his business as such attorney.

2d. In holding that the malicious interference of the defendant in the contracts between the plaintiff and his clients, and inducing such clients to break their contracts to the injury of the plaintiff as charged in the declaration did not constitute a cause of action.

3d. In holding that the declaration did not set forth facts sufficient to constitute an action on the case.

4th. In sustaining the demurrer to the declaration without giving leave to amend.

5th. In sustaining the demurrer to the declaration.

IV.

Argument.

We claim that the declaration charges substantially that the defendant committed a libel against the plaintiff as an attorney, and that the plaintiff was injured thereby both in his reputation and in his business as such attorney.

It charges that the defendant, being Postmaster-General of the United States, with malicious intent, and for no other purpose than to injure the plaintiff, and to cause his clients to repudiate contracts between him and them for fees, and using his official character for such purpose, published and sent to four thousand of such clients a circular, in which it is stated, substantially, that the services for which plaintiff claimed were of little or no value; stating falsely that no attorney's services were necessary to the presentation of the claims before the Department; that after filing of claims no further evidence was required, and falsely and maliciously, and for no other purpose except to injure the plaintiff, giving such a construction to Section 3477 of the Revised Statutes as to cause the said clients to believe that their contracts with the plaintiff were null and void

Although the plaintiff is not named in such circular, it is alleged that it was published with reference to the plaintiff, and for the sole purpose of injuring him; that the persons to whom they were sent understood them to refer to the plaintiff, and it was intended that they should understand the statements to be "of and concerning the plaintiff," and that the sole purpose of issuing them was to induce the claimants to repudiate their contracts, and that all this was malicious and without good cause on the part of the defendant, and that the clients did understand the statements to be of and concerning the plaintiff.

On this point attention is called to the following authorities:

The question is always, How did those to whom the words were originally published understand them?

"What meaning the speaker *intended* to convey is immaterial in all actions of defamation. He may have spoken without any intention of injuring the plaintiff's reputation, but if he has *in fact* done so he must compensate the plaintiff. The slander and the damage consist in the apprehension of the hearers."

Odger's Libel and Slander, p. 72.

The point was made below that the allegation is that it is the intention of the *circular* and not of the defendant. Intention could not be imputed to a circular alone. The intention could apply only to its author or publisher. Surely such a distinction is not reasonable. But, as we have seen, the intention is not material. The

question is as to the reasonable inference from his acts, and the substantive allegation is that those to whom the circulars were addressed understood the circulars to refer to the plaintiff, and to mean that his services were of little or no value, and that they were not bound by their contracts, and could safely and properly repudiate them.

"Where one falsely and maliciously *orally* charges another with anything involving moral turpitude, which if true will subject him to infamous punishment, or that tends to exclude him from society, *or to prejudice him in his office, trade, or business,* the parties accused may seek redress by a suit in slander and recover without proof of actual damage."

"Where the words are false the law infers motive, and where their natural tendency is to injure the law presumes damages."

Watson *v.* Trask, 6 Ohio, 531; 27 Am. Dec., 272.

"The rule is well established that any words written and published throwing contumely on the party *or prejudicing* him in his employment are actionable."

Obaugh *v.* Finn, 4 Ark., 110; 37 Am. Dec., 774.

In Ingram *v.* Lawson, 8 Scott, 471, it was held a libel that a false statement that the vessel which was advertising for freight and passengers was unseaworthy and unfit for the voyage, and in such case it was held that evidence of the ordinary profits of the voyage was competent. (See 72 Am. Dec., 432; note.)

"It is libelous *per se* to impute to a person in his official capacity, profession, trade, or business any kind of fraud, dishonesty, misconduct, incapacity, or unfitness if it be shown that the defamation as matter was published of the plaintiff with reference to that trade or calling."

4 Wait's Act. and Def., 285.

"Any words will be deemed defamatory which tend to injure the plaintiff in his profession or trade."

Odger's Libel and Slander, p. 15.

See precedents and declaration in Odger's Libel and Slander, pp. 484–496; 6 Bing., N. S., 212; 4 M. and W., 450; 12 Ohio, 250; 25 Wend., 621.

A corporation as a firm may maintain an action for libel, and in such case the injury is necessarily to the business of the corporation or firm, and not to the reputation of individual members.

V.

If it should be considered that the declaration does not set forth a libel it is certainly an action on the case. It is not necessary

that one shall be a lawyer to see that the acts charged have been maliciously done, and which resulted in great injury to the plaintiff, were a wrong, for which there ought to be redress.

In Comyn's Digest, Action on the Case (A), it is said: "In all cases where a man has a temporal loss or damage by the wrong of another, he may have an action upon the case to be repaired in damages."

In Lumley *v.* Gye, 2 Ellis & Blackburn (p. 216) it was plainly held that an action will lie for the malicious procurement of the breach of any contract, if by such procurement damage was intended and did result in injury to the plaintiff.

The court below admitted this to be so decided by the majority of the court in Lumley *v.* Gye, but held that it was not bound by that authority and considered the dissenting opinion as the one proper to be followed in this case.

But the doctrine we contend for has now been fully settled in the case of Angle *v.* Chicago, St. Paul, M. & O. Ry. Co., 151 U. S., 1, which is entirely decisive of this case.

As the court said in that case surely it would seem that the recital of such facts would carry with it an assurance that there is some remedy which the law would give to the plaintiff for the losses he had sustained, and that such remedy would reach to the party by whose acts these losses were caused (p. 10).

The court further say: "It has been repeatedly held that if one maliciously interferes in a contract between two parties and induces one of them to break that contract to the injury of the other, the party injured can maintain an action against the wrong doer," citing Lumley *v.* Gye, and several other cases, (pp. 13, 14).

In Bowen *v.* Hale, 62 B. D., 338, the court say: "Merely to persuade a person to break his contract may not be wrongful in law or fact, but if the persuasion be made for the indirect purpose of injuring the plaintiff or of benefiting the defendant at the expense of the plaintiff, it is a malicious act, which is in law and fact a wrong act, and therefore an actionable act, if an injury result from it we think it can not be doubted that a malicious act such as is above described is a wrongful act in law and in fact."

See also other cases cited in Angle *v.* Chicago, St. Paul, M. & O. Ry. Co., and Addison on Torts, Vol. 1–51; Bishop on Non-Contract Law, Sec. 370; Cooley on Torts, 279; 22 Am. Rep., 478, note 486.

VI.

The point was made by counsel in argument before the court below that the declaration omitted to allege that the defendant knew of the existence of such contracts.

Now the plaintiff *does* allege that he has a large number of written contracts with his clients providing a reasonable compensation for his services; that the defendant undertook to cause them

to repudiate such contracts; that he caused the circular to be issued for the malicious purpose and for the sole purpose of "causing the claimants to disregard the contracts they had made with the plaintiff for fees and to cause them to believe that the contracts were null and void," etc., "and was maliciously intended to cause the claimants to believe that the plaintiff's claims for valuable services were false and fraudulent, and the statements were inserted for no other purpose."

Could this be true of the defendant and he not have knowledge of the existence of such contracts? Could he have had a purpose with reference to such contracts, and not have knowledge of the existence of such contracts? If he had a purpose, and his acts in pursuance of such purpose resulted in the injury intended, would it be essential that he should have previous knowledge of the existence of such contracts? The wrong and the injury would be the same whether he knew it or not.

"It is not necessary to allege circumstances necessarily implied."
Stephens on Pleading, p. 37, and examples there cited.
2 Saunders, 305, *a*, note 13.

"Necessary circumstances shall be intended."
5 Com. Digest, p. 395.

"Objection that pleading is argumentative will not be considered on demurrer" (28 Ind., 468; 92 Am. Dec., 329). Court say: "It is objected that the paragraph is argumentative. We must regard the argument as so conclusive as to amount to an express allegation of the fact when tested by a demurrer."
See also 82 Ind., 117; S. C., 81, Am. Dec., 370.

A general statement that a judgment was procured by the fraud of the plaintiff without further describing the circumstances constituting the fraud "is well enough under a general demurrer. Whether general or special, a demurrer admits all such matters of fact as are sufficiently pleaded, and to that extent it is a direct admission that the facts as alleged are true." (Christmas *v.* Russell, 5 Wall., at p. 303.)

A general allegation of fraud without stating particulars is good on *general* demurrer. If there is sufficient in the declaration to enable the plaintiff to give evidence of his right, the court will sustain the pleading. (Wilder *v.* McCormick, 2 Blatch., 31.)

The court below says that it does not appear from the declaration that claims were actually allowed. It would not be necessary to say this, but it does say so substantially. It says that defendant *with such letter of transmittal of drafts* to said claimants caused to be issued and sent to them four thousand circulars, which say: "Herewith you will find warrant payable to your order," etc.

Such allowance is also necessarily implied from other statements in the declaration.

The declaration was easily amendable in these respects if thought necessary, but the court did not in its opinion regard such objections, but decided the case upon the points mentioned in the 4th and 5th paragraphs of this brief.

VII.

Suggestion was also made by counsel in the court below but not entertained by the court that the declaration was objectionable for duplicity, that is that two causes of action were set forth in one count.

We claim that the declaration is but one connected statement of the wrongful acts of the defendant resulting in damages to the plaintiff. It does not make it double that the injury results in damage to both his reputation and business. It does not make it double because there may be a doubt as to whether the action should be styled a libel or an action on the case for procuring breaches of contract, nor that the alleged libel caused the contract to be broken. The declaration narrates the facts as they occurred in one connected statement, and in either event it is an action on the case in which an issue may be made by the simple plea of not guilty.

This objection is one of form and not of substance, and it can not avail except on special demurrer. At common law duplicity could be objected to only by special demurrer. (1 Ch. Ple., 639; McKay *v.* Campbell, 2 Abb. U. S., 120; 5 Abb. Nat. Dig., 370; Christmas *v.* Russell, 5 Wall., p. 303.)

Under our rules a demurrer will not lie except for matters of substance.

By rule 26 the declaration is to state the "*substantive* facts necessary to constitute the cause of action without unnecessary verbiage and with *substantial certainty.*"

"The form of a demurrer shall be as follows, or to the like effect: The defendant says that the declaration is bad *in substance.*" (Rule 31.)

"Demurrer will not lie for matters of form; they must be of substance."

3 Mackey, 162.

Taking the entire declaration, it must be apparent that, whatever name may be given to it, it states the facts making the cause of action with substantial certainty, and in this respect answers the requirement of the rule.

VIII.

It was claimed by the counsel for defendant in special term that he was not answerable for such acts because he was Postmaster-General of the United States; that such acts were within his discre-

tion, and he is therefore exempt, even though his acts were unnecessary and malicious.

This point was expressly abandoned in general term as shown by defendant's brief therein, but as we can not know what position will be taken here it seems proper to discuss it.

In support of this claim were cited cases as to the exemption of a judicial officer from suit in such cases. It must be plain that though there may be reasons for such exemptions as to judges they do not apply to ministerial officers, as the following authorities will show:

"The rule is well settled that where the law requires absolutely a ministerial act to be done by a public officer and he neglects or refuses to do such act he may be compelled to refund in damages to the extent of the injury arising from his conduct. There is an unbroken current of authorities to this effect, an honest intention will not excuse the offender."

Army *v.* Supervisors, 11 Wall., 138.

In Marbury *v.* Madison, 1 Cranch, 137, the court say:

"If one of the heads of departments commits an illegal act, under color of his office, by which an individual sustains an injury it can not be pretended that his office alone exempts him from being tried in the ordinary mode of proceeding and being compelled to obey the judgment of the law."

Where the rights of individuals are dependent upon the acts of the head of a department "he is so far the officer of the law, is amenable to the laws for his conduct, and can not *at his discretion* sport away the vested rights of others."

In Tracy *v.* Swartwout, 10 Peters, 80, a collector of customs, under instructions of the Secretary of the Treasury, had required the plaintiffs, importers of goods, to give a bond for the full value of the cargo, when the law required only a bond of 15 per cent., *ad valorem*, when the plaintiffs offered a proper bond. By the refusal to give the bond exacted, the cargo remained in possession of the collector a considerable period, and in the meantime its value became greatly deteriorated. Suit was brought against the collector, and a verdict of six cents given. Plaintiffs took an appeal, and the court held that the plaintiffs were entitled to substantial damages. The court say:

"The Secretary of the Treasury is bound by the law, and although, in the exercise of his discretion, he may adopt necessary forms and modes of giving effect to the law, yet neither he nor the ones who act under him can dispense with or alter any of its provisions. It would be a most dangerous principle to establish that

the acts of a ministerial officer, when done in good faith, and unsupported by the law, should afford no ground of legal redress. * * * When a ministerial officer acts in *good faith* for an injury done he is not liable to *exemplary* damages, *but he can claim no further exemption* when his acts are clearly against law.

"It seems to be established that if a public officer acts maliciously or wantonly; if the work which he performs, be done rather to injure a private individual than to discharge a public duty, he is responsible for the consequences. He can not act recklessly, wantonly, or maliciously invade private rights and protect himself under the authority of the law. He is not allowed to find shelter under the wing of public authority when he is assailed for acts done for the gratification of his own malignant feelings, or with a wicked disregard of the interests of others."

Yeoly *v.* Fink, 43 Pa. St., 212; 82 Am. Dec., at p. 558. See 80 Am. Dec., 62, and note; 83 Am. Dec., 563; distinction between matter of discretion, etc.

"Where the powers of a public officer are discretionary, to be exerted or withheld according to his own judgment as to what is necessary and proper, he is not liable to any private person for a neglect to exercise those powers *where no malice or corruption can be imputed*, and he keeps within the scope of his authority."

83 Am. Dec., 563; note—extract from Shearman & Redfield on Negligence, 3d ed., sec. 156.

"When an individual sustains an injury by the misfeasance or nonfeasance of a public officer, who acts, or omits to act, contrary to his duty, the law gives redress to the injured party by an action adapted to the nature of the case."

Adsit *v.* Brady, 4 Hill, 630; 40 Am. Dec., 305, and note.

"This is a healthful rule, sound entirely in public policy, if as a rule of law it can be questioned."

Id., note; 34 N. Y., 391; see 90 Am. Dec., 730.

"If a public officer abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer. The instances of this are so numerous that it would be a waste of time to refer to them."

90 Am. Dec., 732; note, citing 5 Bing., 107, 108.

"In State *v.* Glasgow (2d Am. Dec., 629) the Secretary of State of North Carolina was held liable to indictment for fraudulently issuing a land warrant. The court say:

"If a public officer intrusted with definite powers to be exercised

for the benefit of the community wickedly abuses or fraudulently exceeds them, he is punishable by indictment, although no injurious effect results to an individual from his misconduct. The crime consists in the public example in perverting those powers to the purposes of fraud and wrong, which were committed to him as instruments of benefit to the citizens and of safety to their rights."

According to the declaration, the defendant, with a malicious purpose to injure the plaintiff, his official duties not requiring it, and no interest of the United States to be subserved, went out of his way to prepare a paper to be distributed among the clients of the plaintiff, which was intended to reflect upon the plaintiff, and to cause them to believe that their contracts with him were null and void and without the consideration they might believe to exist, and they did have such effect, and thereby caused great injury to the plaintiff both in his reputation and business.

Suppose a judge of the court who may be conceded to be exempt from prosecution when acting within his jurisdiction should interfere between lawyer and client and endeavor to procure the client to break his contract for a fee when no complaint has been made by the client, and it is shown that he did this maliciously, can it be contended that the judge would be exempt from prosecution.

The warrants sent by the defendant between March, 1885, and January 16, 1888, to four thousand of complainant's clients were in payment of salaries earned under section 8 of the Act of June 12th, 1866, by services as postmasters between 1866 and 1874. As the law provides for payment of postmasters when the services are rendered out of the receipts, the plain implication of the facts stated is that the Postmaster-General, whose supreme duty it was to re-adjust the deficient salaries, violated his trust and so deprived the Postmasters of their pay, and that such payments were ultimately enforced by the persistent labor and efforts of the complainant during a term of years. In defendant's communication set forth in the complaint, which he sent to the clients of complainant, these material facts are carefully suppressed and there is substituted therefor defendant's representation in substance that such payments were made by the voluntary act of the Postmaster-General without the intervention of the claimant's services as attorney at all.

The transmission with this circular and with the warrant to each of complainant's clients of a copy of Section 3477 R. S., is equally conclusive of the plain malicious intent of defendant to defraud complainant of his fees by completely deceiving such clients as to the law and facts, for the prohibition of assignment of claims against the Government contained in that statute is a curtailment of the rights of claimants in the interest of the Government, in order that the Government may not be harassed by a multiplicity of claims of assignees of original claims. That statute is in no sense

for the protection of or the enlargement of the rights and interests of claimants against the Government. It is upon its face a dead and obsolete statute as to every claim against the Government as to which a settlement has been made and a warrant issued to the original claimant drawn to his order, for in every such case it has effectually served and completed its intent and purpose by preventing the presentation or consideration of the claim of any pretended assignee of the claim. This law, of no concern to the claimants or to the Government, when these warrants were issued, in respect to such warrants, was sent with each warrant as a matter of the utmost concern to the payee of each warrant. The method and circumstances of its sending carried with it the apparent combined authority of the Postmaster-General and of Congress. In this is shown the plain and confident intent and purpose of the defendant to ruin the complainant by defeating utterly the payment of the fees he had earned through many years of service. Under such circumstances, how could there possibly be an escape from ruin on the part of the complainant? It was not possible for one of all his clients to escape the conviction under such circumstances that he was instructed by the Postmaster-General and by Congress to pay no fees to the complainant. As claimants had had no transaction about their claims except with their attorney it was impossible for either the sender or recipient to mistake its plain purpose. This one and unmistakable purpose was by the assumption of the authority of the Postmaster-General and the assumption to speak by the authority of Congress on the part of defendant to effect the ruin of the complainant by defeating the payment of fees in thousands of cases, which fees represented his earnings and outlays from 1871 to 1886, a period of 15 years of the best part of his life.

The mind can scarcely conceive of a scheme more malicious. The attorney who had dared to contend with officers of the Post Office Department for fifteen years to enforce a law, giving increased pay to the postmasters on increased receipts by re-adjustment thereof by the Postmaster-General and whose contention had become doubly earnest and energetic because the defendant undertook to evade the law, was at last to be utterly destroyed in his business by the defendant for that reason.

The malice of this scheme which is fully set forth in complaint, is only equalled by the genius and skill of its author and by the apparent certainty of success which it promised to its author.

We submit that the declaration describes a wrong for which there should be redress in the courts, that the plaintiff has a right to show bejore a jury whether or not the allegations of such declaration are true, and that the judgment of the court below should be reversed.

W. WILLOUGHBY,
Counsel for Plaintiff in Error.

for the protection of or the enlargement of the rights and interests of claimants against the Government. It is upon its face a dead and obsolete statute as to every claim against the Government as to which a settlement has been made and a warrant issued to the original claimant drawn to his order, for in every such case it has effectually served and completed its intent and purpose by preventing the presentation or consideration of the claim of any pretended assignee of the claim. This law, of no concern to the claimants or to the Government, when these warrants were issued, in respect to such warrants, was sent with each warrant as a matter of the utmost concern to the payee of each warrant. The method and circumstances of its sending carried with it the apparent combined authority of the Postmaster-General and of Congress. In this is shown the plain and confident intent and purpose of the defendant to ruin the complainant by defeating utterly the payment of the fees he had earned through many years of service. Under such circumstances, how could there possibly be an escape from ruin on the part of the complainant? It was not possible for one of all his clients to escape the conviction under such circumstances that he was instructed by the Postmaster-General and by Congress to pay no fees to the complainant. As claimants had had no transaction about their claims except with their attorney it was impossible for either the sender or recipient to mistake its plain purpose. This one and unmistakable purpose was by the assumption of the authority of the Postmaster-General and the assumption to speak by the authority of Congress on the part of defendant to effect the ruin of the complainant by defeating the payment of fees in thousands of cases, which fees represented his earnings and outlays from 1871 to 1886, a period of 15 years of the best part of his life.

The mind can scarcely conceive of a scheme more malicious. The attorney who had dared to contend with officers of the Post Office Department for fifteen years to enforce a law, giving increased pay to the postmasters on increased receipts by re-adjustment thereof by the Postmaster-General and whose contention had become doubly earnest and energetic because the defendant undertook to evade the law, was at last to be utterly destroyed in his business by the defendant for that reason.

The malice of this scheme which is fully set forth in complaint, is only equalled by the genius and skill of its author and by the apparent certainty of success which it promised to its author.

We submit that the declaration describes a wrong for which there should be redress in the courts, that the plaintiff has a right to show before a jury whether or not the allegations of such declaration are true, and that the judgment of the court below should be reversed.

W. Willoughby,
Counsel for Plaintiff in Error.

Office Supreme Court U. S.
FILED.
NOV 19 1895
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

HARVEY SPALDING, PLAINTIFF IN ERROR,
v.
WILLIAM F. VILAS. } No. 81.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR WILLIAM F. VILAS.

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

HARVEY SPALDING, PLAINTIFF IN ERROR,
v.
WILLIAM F. VILAS. } No. 81.

IN ERROR TO THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

BRIEF FOR WILLIAM F. VILAS.

STATEMENT.

This cause comes upon writ of error from the supreme court of the District of Columbia, the case standing upon demurrer to the declaration, which was sustained by that court.

The demurrer is as follows:

> The defendant says that the plaintiff's declaration is bad in substance.
>
> NOTE.—Among the matters of law relied upon and to be argued in support of the above demurrer is that the plaintiff's pretended damages are alleged to flow from certain acts of the defendant as the Postmaster-General of the United States, all of which acts, as is apparent upon the face of the decla-

ration, were done and performed by the defendant in the exercise of a lawful discretion in him vested as such Postmaster-General, for the exercise of which said discretion, even willfully and maliciously, as alleged in said declaration, the defendant is not liable at the private suit of the plaintiff. (Rec., pp. 5, 6.)

Statutes.

The following statutes are involved:

Act June 22, 1854 (10 Stat. L, 298, 299):

That in place of the compensation now allowed deputy postmasters, the Postmaster-General be, and he is hereby authorized to allow them commissions at the following rates on the postage collected at their respective offices in each quarter of the year, and in due proportion for any period less than a quarter, viz:

On any sum not exceeding one hundred dollars, sixty per cent; but any postmaster at whose office the mail is to arrive regularly, between the hours of nine o'clock at night and five o'clock in the morning may be allowed seventy per cent on the first hundred dollars;

On any sum over and above one hundred dollars, and not exceeding four hundred dollars, fifty per cent;

On any sum over and above four hundred dollars, but not exceeding twenty-four hundred dollars, forty per cent;

And on all sums over twenty-four hundred dollars, fifteen per cent;

On the amount of postage on letters and packages received at distributing office for distribution, twelve and one-half per cent commission may be allowed;

Every postmaster whose compensation shall not exceed five hundred dollars in one quarter shall be

allowed one cent on every free letter delivered out of his office, except such as are for the postmaster himself. But the special allowance now made by law to the postmasters at New Orleans and Washington City shall not otherwise be increased or diminished.

* * * * *

Provided further, That the commissions and allowances authorized by this act shall be subject to the provisions of the forty-first section of the act entitled, "An act to reduce into one the several acts establishing and regulating the Post-Office Department:" *And provided further*, That the Postmaster-General may, in his discretion, dispose of any quarterly returns of mails sent or received, which were made up previous to the first day of July, eighteen hundred and fifty, preserving the accounts current, and all vouchers accompanying such accounts, and use such portion of the proceeds thereof as may be necessary to defray the cost of separating and disposing of the same. This act shall take effect and be in force from and after the commencement of the next fiscal quarter after its passage.

Act July 1, 1864 (13 Stat. L., 336):

SEC. 2. *And be it further enacted*, That the Postmaster-General shall review once in two years, and in special cases, upon satisfactory representation, as much oftener as he may deem expedient, and readjust, on the basis of the preceding section, the salary assigned by him to any office; but any change made in such salary shall not take effect until the first day of the quarter next following such order, and all orders made assigning or changing salaries shall be made in writing and recorded in his journal and notified to the Auditor for the Post-Office Department.

Act of June 12, 1866 (14 Stat. L., 60):

SEC. 8. *And be it further enacted*, That section two of the act entitled "An act to establish salaries for postmasters, and for other purposes," approved July one, eighteen hundred and sixty-four, be amended by adding the following: *Provided*, That when the quarterly returns of any postmaster of the third, fourth, or fifth class show that the salary allowed is ten per centum less than it would be on the basis of commissions under the act of eighteen hundred and fifty-four, fixing compensation, then the Postmaster-General shall review and readjust under the provisions of said section.

Act March 3, 1883 (22 Stat. L., 487):

Be it enacted, etc., That the Postmaster-General be, and he is hereby, authorized and directed to readjust the salaries of all postmasters and late postmasters of the third, fourth, and fifth classes, under the classification provided for in the act of July first, eighteen hundred and sixty-four, whose salaries have not heretofore been readjusted under the terms of section eight of the act of June twelfth, eighteen hundred and sixty-six, who made sworn returns of receipts and business for readjustment of salary to the Postmaster-General, the First Assistant Postmaster-General, or the Third Assistant Postmaster-General, or who made quarterly returns in conformity to the then existing laws and regulations, showing that the salary allowed was ten per centum less than it would have been upon the basis of commissions under the act of eighteen hundred and fifty-four, such readjustments to be made in accordance with the mode presented in section eight of the act of June twelfth, eighteen hundred and sixty-six, and to date from the beginning of the

quarter succeeding that in which such sworn returns of receipts and business or quarterly returns were made: *Provided*, That every readjustment of salary under this act shall be upon a written application signed by the postmaster or late postmaster or legal representative entitled to said readjustment; and that each payment made shall be by warrant or check on the Treasurer or some assistant treasurer of the United States, made payable to the order of said applicant, and forwarded by mail to him at the post-office within whose delivery he resides, and which address shall be set forth in the application above provided for.

Act July 7, 1884 (23 Stat. L., 248):

* * * for compensation of postmasters, one million five hundred and fifteen thousand dollars, including four hundred and fifty-five thousand six hundred and eighty-four dollars for additional compensation for postmasters of the fourth class, as provided by the act approved March third, eighteen hundred and eighty-three, for the period from March third, eighteen hundred and eighty-three, to June thirtieth, eighteen hundred and eighty-three.

* * * * *

To pay accounts in cases of salaries of postmasters and late postmasters which have been readjusted and allowed under the act approved March third, eighteen hundred and eighty-three, entitled "An act authorizing and directing the Postmaster-General to readjust the salaries of certain postmasters in accordance with the provision of section eight of the act of June twelfth, eighteen hundred and sixty-six," forty-five thousand two hundred and thirteen dollars and eighty cents.

Act March 3, 1885 (23 Stat. L., 385):

OFFICE OF THE FIRST ASSISTANT POSTMASTER-GENERAL: For compensation to postmasters, twelve million three hundred thousand dollars.

Act August 4, 1886 (24 Stat. L., pp. 307, 308):

SEC. 8. For compensation of postmasters readjusted because of the act of March third, eighteen hundred and eighty-three, and to pay the several amounts reported by the Auditor of the Treasury for the Post-Office Department as due and unpaid, payable from deficiency in the postal revenue for eighteen hundred and eighty-three and prior years, three hundred and eighty thousand two hundred and nine dollars and forty-six cents: *Provided*, That the method of reviewing and readjusting the salaries of postmasters and late postmasters of the third, fourth, and fifth classes, under the classification of the act of July first, eighteen hundred and sixty-four, during the period between July first, eighteen hundred and sixty-four, and July first, eighteen hundred and seventy-four, which has been practiced in the Post-Office Department under and since the act of March third, eighteen hundred and eighty-three, entitled, "An act authorizing and directing the Postmaster-General to readjust the salaries of certain postmasters in accordance with the provision of section eight of the act of June twelfth, eighteen hundred and sixty-six," by which all such reviews and readjustments have been made prospectively for the biennial periods provided for in the said act of July first, eighteen hundred and sixty-four, upon the basis of the quarterly returns of postmasters during the preceding biennial periods, respectively, whenever the salary actually paid was ten per centum less in amount than such salary should have been if

adjusted correctly upon such returns by computing what the commissions upon the same would have been under the act of June twenty-second, eighteen hundred and fifty-four, and averaging the amount thereof annually, as directed by the act of July first, eighteen hundred and sixty-four, for fixing salaries, is approved and ratified as a correct administration of the aforesaid act of March third, eighteen hundred and eighty-three, and of all other acts applicable thereto; and that the several readjustments which have been made are ratified as a correct disposition of the several claims which have been considered and disposed of, and for which this appropriation is made; and the several persons to whom amounts have been respectively found due are declared the rightful persons entitled to the same, and such amounts to be the full sums due upon any and all such claims; and that all claims in excess thereof, and all other claims for readjustment which have been examined and found by the proper officers of the Post-Office Department not entitled to readjustment within such rule of administration, are disallowed and barred; that no claim for review or readjustment of any such salary shall be hereafter considered unless the same shall be presented to the Post-Office Department before the first day of January, eighteen hundred and eighty-seven; and that in considering all claims not yet readjusted the same method shall be pursued which is hereby approved; and any and every different method of readjustment of salaries of such postmasters and late postmasters during the period between July first, eighteen hundred and sixty-four, and July first, eighteen hundred and seventy-four, than is herein approved, is hereby prohibited; and no action or suit shall be maintainable in any court against any officer of the United States by reason of his action in reviewing

or refusing to review, or allowing or disallowing, any application for readjustment of any such salary: *And provided further*, That payment of all sums hereby appropriated shall be made by warrants or checks, as provided by the said act of March third, eighteen hundred and eighty-three, payable to the order of and transmitted to the persons entitled respectively thereto.

Act February 1, 1888 (25 Stat. L., 32):

For compensation of postmasters readjusted under act of March third, eighteen hundred and eighty-three, payable from deficiency in postal revenues, eighteen hundred and eighty-five and prior years, one hundred and sixty thousand two hundred and eighty-six dollars and five cents.

Act March 30, 1888 (25 Stat. L., 62):

For compensation of postmasters readjusted under act of March third, eighteen hundred and eighty-three, payable from deficiency in postal revenue, eighteen hundred and eighty-five and prior years, three hundred and eighty thousand three hundred and twenty-one dollars and forty-four cents.

*

ASSIGNMENTS OF ERROR.

First. The court below erred in not holding that the declaration charges substantially that the defendant committed a libel against the plaintiff as an attorney, and that the plaintiff was injured thereby in his reputation and his business as such attorney.

Second. In holding that the malicious interference of the defendant in the contracts between the plaintiff and his clients, and inducing such clients to break their contracts, to the injury of the plaintiff, as charged in the declaration, did not constitute a cause of action.

*

SEC. 3477 (Revised Statutes). All transfers and assignments made of any claim upon the United States, or of any part or share thereof, or interest therein, whether absolute or conditional, and whatever may be the consideration therefor, and all powers of attorney, orders, or other authorities for receiving payment of any such claim, or of any part or share thereof, shall be absolutely null and void, unless they are freely made and executed in the presence of at least two attesting witnesses, after the allowance of such a claim, the ascertainment of the amount due, and the issuing of a warrant for the payment thereof. Such transfers, assignments, and powers of attorney, must recite the warrant for payment, and must be acknowledged by the person making them, before an officer having authority to take acknowledgments of deeds, and shall be certified by the officer; and it must appear by the certificate that the officer, at the time of the acknowledgment, read and fully explained the transfer, assignment, or warrant of attorney to the person acknowledging the same.

Third. In holding that the declaration did not set forth facts sufficient to constitute an action on the case.

Fourth. In sustaining the demurrer to the declaration without giving leave to amend.

Fifth. In sustaining the demurrer to the declaration. (Plaintiff's brief, p. 3.)

POINTS AND ARGUMENT.

The substance of the declaration is as follows:

First. In or about the year 1871 plaintiff was employed by a number of postmasters to obtain a readjustment of their salaries in accordance with the act of 1866.

(NOTE.—It will be observed that—

(*a*) These contracts were confined to getting a readjustment in accordance with the act of 1866.

(*b*) They did not contemplate the procurement of legislation.

(*c*) They did not cover what might be done under acts passed subsequent to 1866.

(*d*) It is not stated how many there were, nor with whom.)

Second. A *large number* of these postmasters had valid claims, and a *large number* of them made written contracts with plaintiff employing him "for procuring the same," and gave him powers of attorney to prosecute said claims and to receive the drafts therefor.

(NOTE.—(*a*) It is not stated who these contracting parties were, nor the number of them.

(*b*) These were contracts to collect under the act of 1866, and did not provide for procuring legislation.)

Third. Upon making and filing applications at the Post-Office Department in behalf of his clients, the same were denied.

(NOTE.—(*a*) This covers all of the contracts made up to that time.

(*b*) The claims covered by contracts made up to this time were denied by the Department, and this ended the contract service.

(*c*) *All this occurred before defendant came into office.*)

Fourth. Then plaintiff "took measures to procure mandatory legislation by Congress and appropriations necessary, pressing such legislation by all lawful means in his power in the different Congresses from 1871 to 1886, giving to such efforts a great amount of his time."

(NOTE.—This, so far as plaintiff seeks to found any contract in respect of it and injury for causing the same to be broken, is contrary to public policy, and the loss sustained is *damnum absque injuria.*)

Fifth. In the meantime *he procured* similar contracts and applications and powers of attorney from several thousand postmasters, and filed them in the Post-Office Department.

(NOTE.—(*a*) This is a bald statement that he solicited several thousands of parties, and not they him.

(*b*) No names are given.

(*c*) These contracts are different from those referred to in the prior part of the declaration.

(*d*) As will appear from a careful scrutiny of the whole declaration, it is not averred whether the injury complained of was in respect to these or the other contracts, or in respect to some of both kinds.

(*e*) It is not averred that any of this class had just and valid claims.)

Sixth. He expended "a good many thousands of dollars in building up a business in the collection of such claims."

(NOTE.—The losses must be confined to those which came as the direct result of broken contracts. What he expended in building up a business is too remote. He may have expended it unwisely or illegitimately.)

Seventh. He finally obtained, by his "continual and persistent efforts," the passage of the act of Congress of March 3, 1883, requiring the Postmaster-General, upon proper presentation, to compute and pay such claims; also acts of 1884, 1885, and 1886, making appropriations for such claims.

(NOTE.—(*a*) This can not be a legitimate matter of consideration, for it was not contemplated by the contracts, and so was not constituent of their value.

(*b*) Contracts for compensation for such services, where the character of work to be done is not clearly distinguished as being legitimate, are against public policy.)

Eighth. Under these acts plaintiff made out papers and proofs for the presentation of such claims and filed the same in the Post-Office Department.

(NOTE.—The declaration does not show that plaintiff had any contract providing for compensation for prosecuting claims under these acts. The only contracts referred to related alone to procuring readjustment under the act of 1866. After the claims were denied under that act, there is nothing to show any authority to prosecute the claims further.)

Ninth. He commenced the collection of the same.

(NOTE.—From the next averment it appears that some claims were rejected. The just inference, as he had

commenced collection and some claims were rejected, is that he collected some under the contracts made.)

Tenth. A large number of such claims which were valid were, prior to March, 1885, repudiated by the Post-Office Department, and their prosecution was made difficult by reason of the hostility of those managing such Department.

(NOTE.—This states that a large number of valid claims were rejected. The next averment shows that they were again presented, together with other claims, in respect of the validity of which no averment is made. A scrutiny of the entire declaration shows that it is not averred to which class the parties who broke their contracts belonged, or whether any of them had valid claims.)

Eleventh. Soon after March 3, 1885, plaintiff made application to defendant, in his capacity of Postmaster-General, to adjust and pay "the said claims which had been disallowed," and to review and readjust claims of the same character which had not before been presented, which applications were refused.

Twelfth. A controversy arose between plaintiff and defendant in relation thereto, and defendant "among other things" endeavored (without success) to obtain legislation to destroy plaintiff's rights under said contracts.

(NOTE. (*a*) This does not aver what these other things were, or that they were unlawful or done maliciously.

(*b*) No damage can be predicated on the unsuccessful attempt to procure hostile legislation.)

Thirteenth. To further harass and injure plaintiff in his good name and business, defendant, without good reason and with malicious intent—

(*a*) Interposed all possible obstacles to the collection of said claims.

(NOTE.—What was thus done is not averred, and it is not said that anything unlawful was done.)

(*b*) Undertook to induce *the clients* of plaintiff to repudiate the contracts they had made.

(NOTE.—The declaration here takes on the aspect of an action for libel. The whole trend of it otherwise is toward a suit for maliciously and by unlawful means, causing others to break valuable contracts. This general averment is limited by the particular means set forth in the declaration.)

Fourteenth. For such purpose and with such malicious intent he caused the payment of such claims to be made directly to the claimants.

(NOTE.—If the law did not make it his duty to pay to claimants, yet the act was not wrongful. *A fortiori* it was not if the law permitted or directed it, and this it did.)

Fifteenth. This was done for the malicious purpose of causing the claimants to disregard the contracts and to cause them to believe that the same were null and void, and that plaintiff had rendered them no services, and that he was attempting falsely to claim for valuable services rendered under said contracts, falsely claimed to be valid, defendant using his official character for such purpose.

(NOTE.—If sending the drafts directly to the claimants was not unlawful, then no amount of spite or malice accom-

panying the act could make it actionable, or make it in any sense an element that could be considered as in any way contributing to bring about the damage.

If it were lawful, then the ulterior desire that it would cause the contracts to be broken would not make it actionable.)

Sixteenth. The effect of this was to place plaintiff before the country as a common swindler, and to bring him into public scandal, infamy, and disgrace, and to injure his business.

(NOTE.—This effect, it is said, resulted from the act of remitting direct. This effect is not averred to have come in anyway from the circulars. It is not averred that his name was mentioned in the transmission of the payments, or that they were in any sense public. Yet, it is said that thereby he was placed before the country as a common swindler. It is not averred that he was generally regarded as a common swindler, and that he acquired such a reputation before the public, or that anyone believed him to be a common swindler.)

Seventeenth. With each letter, sending drafts to said claimants, defendant sent, between September, 1886, and January 17, 1888, to four thousand of them who were plaintiff's clients, residing in certain States named, a circular.

(NOTE.—(*a*) This does not show to what persons the circulars were sent.

(*b*) It does not show that any of them were of those who had just and valid claims.

(*c*) It does not show whether they or any of them were of those who originally contracted or of those from whom contracts were "procured.")

Eighteenth. This circular was as follows:

(*a*) It referred to the draft inclosed.

(*b*) It stated that the act of 1883 directed that all warrants should be made payable and be sent direct to the claimants.

(*c*) That Congress, in a subsequent enactment, repeated this direction.

(*d*) This act was printed on the circular.

(*e*) It is stated that Congress did this because "no attorney's services were necessary to the presentation of the claim before the Department, and the Congress desired all the proceeds to reach the person really entitled thereto."

(*f*) It further stated that after a claim of this character is filed in the Department, its examination and readjustment are made directly from the books in the Department, by its officers, and without further evidence.

(*g*) It further stated that by section 3477 of the Revised Statutes, a copy of which is printed on the circular, any transfer of the claim, or power of attorney for receiving payment of the warrant, is null and void.

Nineteenth. It is averred that—

(*a*) The circular is false, and intended to deceive said claimants.

(*b*) They were deceived.

(NOTE.—It is not averred which of the claimants were deceived, nor whether any of those having just and valid claims were deceived.)

(*c*) They believed what defendant meant and intended, of and concerning the plaintiff, as has been before stated; i. e., what it is averred in the former part of the declaration defendant meant and intended of and concerning the plaintiff. Referring to this (Rec., p. 2), it appears

that no thing was averred in respect of what was intended or meant by the circulars. The averments referred alone to the act of sending the drafts. The matter of the circulars is then taken up as an additional ground of complaint.

Twentieth. That it was false in stating that—

(*a*) The acts of 1883 and 1886 directed that all checks be transmitted direct to the claimants.

(NOTE.—This statement was true and lawful, and hence can not be an element to sustain a suit for damages. It was a mere opinion about a public act which any man has the right to express to any person in any way and at any time.

No matter what Congress may have desired, this could not affect a legal contract unless the act inhibited it, and ought not to be taken as influencing any person to break such a contract. It was an explanation of why the money was sent direct, and nothing more. This was the natural office which the statement performed.)

(*b*) This was done because no attorney's services were necessary to the presentation of the claim before the Department.

(*c*) This was done because Congress desired all the proceeds to reach the person really entitled thereto.

(NOTE.—(*b*) and (*c*). Superadding the opinion that Congress was actuated by particular motives can not be actionable.)

(*d*) The claims of this character, after being filed in the Department, were examined and readjusted directly from the books and papers in the Department without further evidence.

(NOTE.—This is stated to be untrue, but it is not averred that defendant knew it was untrue. Notwithstanding the averment, the court can see that the statement is true, for the statutes set out provide expressly that the readjustment shall be made on the basis of the records in the Postoffice Department. Any other evidence would be irrelevant and incompetent, and Congress did not provide for such, but itself prescribed the data of record which were to be looked to by the Postmaster-General in discharging this duty, which was one involving executive discretion. But, if the statement were false, and knowingly made, and with malice, and to injure, nevertheless it is not averred that this statement caused the injury complained of.)

Twenty-first. It says that this last statement, *besides being untrue in many cases*, was unnecessary to protect the interests of the Government or the claimant, was not required by law, and was maliciously intended to cause the claimant to believe that the plaintiff's claim for valuable services was false and fraudulent, and the same was inserted for no other purpose.

(NOTE.—This statement is not averred to be false as to all of the claims, nor as to any of the claims in respect of which contracts were broken.

The averment is that it was untrue in many cases; not that it was untrue in any case complained of.

The averment should be positive in respect of these cases. Everything is taken against the pleader, and this statement must be left out of consideration. This leaves all of the statements which caused the breach, to be true, or mere expressions of opinion, and all of them lawful, as above shown.)

Twenty-second. The reference to the printing of section 3477 was for the malicious purpose only of causing the

claimants to believe that the said contracts were null and void, according to a pretended official ruling of the Post-Office Department, which said section had no reference to such contracts.

(NOTE.—There is no deception here. The act is set out. The parties could see it. They are presumed to know the law. If defendant was mistaken, or if the statement was false, the act was a corrective. This is not like stating a falsehood where the parties have not equal means of knowledge.

Certainly the powers of attorney which plaintiff held were void, for they, as shown, were made before the allowance of the claim, and as to him in this matter the interpretation was correct.

Besides, if false and erroneous, the citing of a statute and putting a construction on it is a lawful means, and can not enter in, as an element, to sustain a suit for damages.)

Twenty-third. All of said statements, references, and printing "were unnecessary, malicious, and without reasonable or probable cause, and were intended to deceive the claimants and to thereby induce them to repudiate the contracts they had made with plaintiff."

Twenty-fourth. They understood said circular as meant and intended, as herein stated, of and concerning the plaintiff.

Twenty-fifth. They were deceived.

Twenty-sixth. They repudiated their said contracts by reason thereof.

(NOTE.—It is not averred which of the claimants so understood and were deceived and repudiated, nor whether any of them had valid claims.)

Twenty-seventh. This greatly injured the good name of plaintiff and his business.

Twenty-eighth. Soon after the issue of said circulars began, plaintiff called defendant's attention to the fact that they were injurious to his business and unjust toward him, but, notwithstanding this, defendant maliciously continued the issue so long as he was Postmaster-General, to the number of 4,000, and for the purpose alone of further injuring plaintiff.

Twenty-ninth. In consequence of the said acts of the defendant, the plaintiff—

(*a*) Was put to trouble and expense in enforcing said contracts.

(NOTE.—Nothing is claimed for this.

This covers only contracts which were carried out, and so no damage came from the breach of them, except the trouble and expense of enforcing them. The names of the parties are not set out.)

(*b*) Lost the benefit of many of the same.

(NOTE.—He does not give the names of the parties, nor does he aver that they had valid claims, nor that he used any diligence to collect his fees.

He said "in consequence of the said acts." If the act of sending the drafts direct to insolvent parties caused the loss, he could not, for this, recover, for this was a lawful act. He does not aver that any of these parties would have paid out of this money so sent, but for the false representations made by defendant.)

Thirtieth. This expense and loss amounted to $25,000.

Thirty-first. Besides, he suffered in injury to his good name and reputation to the amount of $75,000.

Looking through the veil which softens the outlines, but does not conceal the form of the transaction, it is

quite apparent that before defendant went into office plaintiff was employed by some postmasters to have their salaries, under an existing law, readjusted; that plaintiff established a regular business of stirring up claims against the Government, and in its prosecution "procured" several thousand contracts from postmasters other than those who had originally employed him, and this procurement of contracts was carried on upon such an extensive scale that it cost him "a good many thousands of dollars;" that while he was employed to collect claims under an existing law he expanded the scope of his activities, and by "continual and persistent efforts" brought about the passage of several acts by Congress; that by his procurement of contracts, and meddling with legislation, and pressing these claims, which numbered many thousands, he so harassed the Post-Office Department as to arouse the greatest hostility of the officers in charge of the claims, many of which were acted on and rejected.

All this took place before defendant came into office. Then these rejected claims and new claims were pressed on defendant to such a degree that an acrimonious controversy arose.

Defendant, not mentioning plaintiff, nor using any apt language identifying him, in making remittances as required by Congress issued a circular setting forth certain laws, giving his interpretation of them and the reasons which, in his opinion, actuated Congress in passing them, and stating the method pursued in his office in adjusting such claims.

The question is whether the head of an Executive Department can, on such a state of facts and without doing a single unlawful thing, be made liable to any or every claim agent who thus thrusts himself between the Government and its employees and "procures" claims to be filed, even though it be charged that malice actuated the officer and that the plaintiff was injured.

I.

The declaration is fatally defective, because it does not set forth the cause of action with sufficient certainty. It is claimed that damages were sustained by reason of the fact that defendant caused to be sent, to clients of plaintiff in error, 4,000 circular letters of the tenor of that set out in the declaration.

The declaration does not state the name of a single one of these clients, or whether the plaintiff had other, and, if so, how many clients, having similar claims, residing in the States and Territories named, or any of them. It does not state how many, or who, of the persons to whom the circulars were sent, refused, in consequence thereof, to pay the plaintiff his fees, nor is any amount in the aggregate or in detail given of the fees said to have been lost. The declaration is so vague and indefinite that it does not give notice to defendant of the particular claims that are intended to be urged, and the cause of action is not specified with sufficient definiteness to enable him to plead in bar, or prepare a defense thereto, and no judgment in favor of the defendant rendered thereon upon

the merits of the case would be an estoppel upon the plaintiff against any future suit based on the same alleged grievances.

The facts which constitute a cause of action should be stated with certainty, precision, and brevity. (1 Chitt. Plead., *256, *270, *271, *277; Poe on Pleading and Practice at Law, vol. 1, p. 475.)

In *P. D. and M. S. N. Co.* v. *Dandridge* (8 G. & J., 311, 312) the court said:

> The object of all pleadings is that the parties litigant may be mutually apprised of the matters in controversy between them. The declaration should substantially present the facts necessary to constitute the plaintiff's right of action, that the defendant being thereby forewarned of the nature of the proof to be preferred against him may, if necessary, be prepared to contradict, explain, or avoid it.

It was held in this case as follows:

> To enable the defendants to make the requisite preparations to meet the proof against them, in a case like the present, some more certain and definite description should have been given of the cargo than that of "goods, chattels, wares, and merchandise." (See *Candler & Hart* v. *Rossiter*, 10 Wend., 487; Gould's Pl., 503; Stephen's Pl., 348; *Martin* v. *Hendrickson*, 2 Ld. Ray., 1007; *Wiatt* v. *Essington*, 2 Ld. Ray., 1410.)

The law requires every issue to be founded on some certain point, that the parties may come prepared with the evidence and not be taken by surprise, and that the jury may not be misled by the introduction of various matters. (*Minor et al.* v. *Mechanics' Bank of Alexandria* 1 Pet., 46, 67.)

The cause of action ought also to be stated in such a manner as to afford the defendant a fair opportunity of making a full and complete defense. (*Abitbol* v. *Bristow*, 6 Taunt., 464; 1 Eng. Com. Law, 464.)

The cause of action should be stated so that recovery in the suit may be pleaded in bar to any future action for the same thing. (*Brooks* v. *Scott's Ex.*, 2 Munf., 347; *Chichester* v. *Vass*, 1 Call., 104.)

II.

The declaration refers to divers acts of Congress, and asserts that certain statements contained in the circular letters issued by the defendant as to the purport of these acts are false. Among other such averments is the following:

> That in the act of 1883, which provided for readjustments of salary, the Congress directed that all checks or warrants should be transmitted direct to the claimants, and that such direction was repeated in the act of 1886. (Rec., p. 3.)

The act in question shows that these statements made in the circular are true in fact, and that the said averment in the declaration is false.

To what extent this statement in the circular operated upon the said clients of plaintiff in error is not set forth, and how far the same enters into and makes up his alleged cause of action does not appear. If these truthful statements caused the injury, then there could be no recovery.

The declaration is fatally defective in that it avers that a statement was falsely made and that it brought about the injury for which suit is brought, while the statute made part of the declaration shows that this statement was true.

III.

The declaration is defective, in that it sets forth that the injury was brought about by defendant causing clients with whom plaintiff had contracts which provided for a reasonable compensation to break such contracts.

As the parties would not be justified in breaking contracts, and it is not alleged that plaintiff's compensation was not payable generally for services rendered, but was to come alone from whatever might be realized from collections, it does not appear that any injury was sustained by plaintiff in error, and that he did not have, notwithstanding the acts of defendant, a perfect right to recover reasonable compensation from his clients, and he does not allege that any of those from whom he failed to receive compensation were insolvent, and that by reason of this insolvency the injury accrued.

His clients had a right, if they chose, to break their contracts and pay the damages. (2 Sutherland on Damages, 193.)

An action can not in general be maintained for inducing a third person to break his contract with the plaintiff, the consequence, after all, being only a broken contract, for which the party to the contract may have his remedy by suing upon it. (Cooley on Torts, 497.)

IV.

The declaration does not aver that defendant knew that plaintiff had any such contracts as alleged.

The liability for a tort in causing a third person by deception to break a contract is limited to cases where the wrongdoer has knowledge of the existence of the contracts the violation of which he induces.

In *Lumley* v. *Gye*, 2 El. & Bl., 223; *Green* v. *Button*, 2 Cromp., Mees. & Ros., 707; *Bowen* v. *Hall*, 6 Q. B. D., 333, and *Angle* v. *C., St. Paul, M. and O. Ry. Co.*, 151 U. S., 1, which are the leading authorities establishing the right to sue for causing a contract to be broken it was averred that the defendant knew of the existence of the contract.

V.

The language of the circular letters alleged to have been sent by the defendant is clearly not actionable *per se*.

There is no reference in the circular to plaintiff, and there is nothing to connect his name with what was done by defendant.

The allegation that the result of the action of defendant was to place "the plaintiff before the country as a common swindler" is defective in this—that it does not aver that it was generally understood in the country, by those receiving and seeing the drafts, that they referred to and were intended to apply to plaintiff, and there is no averment that as a consequence of these remittances plaintiff was regarded and acquired the reputation and general character of being a common swindler.

VI.

The declaration is insufficient in so far as it relates to the expenses and loss of $25,000 alleged to have been sustained out of the contracts in this, that it avers that plaintiff was employed by a considerable number of persons who had been postmasters, and who had just and valid claims against the United States; that he procured similar contracts from several thousands of postmasters, but he does not aver that any of these had just and valid claims against the United States. The expenses and losses which it is said occurred through the acts of defendant were in enforcing the said contracts and the loss of the benefit of many of the same. Thus there is no discrimination between the loss and expense that may have arisen in respect of the contracts made with those who had just and valid claims and that which may have arisen from the other contracts in regard to which no such averment is made. The whole loss of benefit may, for aught that appears in the declaration, have come by reason of the fact that the four thousand contracts procured from 1871 to 1886 were not lawful and valid claims against the United States. Indeed the actual damage claimed is only for the expense and loss of $25,000, which came from the loss of the benefit of many of the contracts, and no claim is made for the trouble and expense in respect of the contracts which he enforced. Furthermore, he does not aver how he lost the benefit of these contracts, or that he made any effort to enforce them.

The fact that it appears from the declaration that payments were actually made would not cure the defect of

not averring that the parties who broke contracts had valid claims.

While the payment would be strong evidence of the fact that the claims were valid, yet it can not avail as an equivalent to a positive averment, which must be made to sustain the action. No recital of facts that would constitute evidence of another fact, which must be averred to make a good declaration, can make good its absence.

A plea which is mere evidence is bad on demurrer. (*Digby* v. *Alexander*, 8 Bing., 116.)

The fact of remittance is only set up incidentally, and is not set up in the pleading as an averment that the contracts were valid.

Whatever facts are necessary to constitute a cause of action must be particularly and distinctly stated. (*Lipe* v. *Becker*, 1 Denio, 569, 570.)

If the declaration had set out as a positive averment that payments were made, and that for this reason the claims were valid, it would have been defective. This would be a *quasi* recital, and not a direct averment that the claims were valid. Where there is no express averment, but it is made only by a *quodcum*, it is defective. (See Robinson's Practice, vol. 3, pp. 530–532.)

VII.

THE ACTION CAN NOT BE SUSTAINED FOR LIBEL.

The declaration states on page 3 that the circular was false and intended to deceive, and that they were de-

ceived and "believed what the defendant meant and intended as hereinbefore stated of and concerning the plaintiff."

It is not "hereinbefore stated" at any place that the circular was published of and concerning the plaintiff. On page 2, where the remittance of the drafts is spoken of, it is said that this was done to cause people to believe that the contracts were null and void, and that plaintiff was a swindler, but this averment is confined alone to the act of sending the drafts, which was not a publication, and there is no averment anywhere that the circular was published of and concerning the plaintiff.

Nothing that was done was defamatory, or tended to injure the plaintiff in his profession or trade, by reflecting on his capacity or character or trustworthiness in carrying on his profession. All that can be made out of it at most is that Mr. Vilas issued a statement which led the clients of plaintiff in error to believe that, in this particular thing, he had done no services for which compensation should be allowed, and this was in no sense libelous.

The scandal must be apparent from the words themselves. (*James* v. *Rutlech*, 4 Coke 17.)

The defamatory words must refer to some ascertained or ascertainable person, and that person must be the plaintiff. "If the words used really contained no reflection on any particular individual, no averment or innuendo can make them defamatory." (Odgers on Libel and Slander, *127; Newell on Defamation, Slander, and Libel, p. 256, § 17.)

The complaint is bad on demurrer because it does not allege that the defamatory matter was published of and concerning the plaintiff. (*McCallum* v. *Lambie*, 145 Mass., 234.)

In an action for scandalous words, it is requisite that "the person scandalized be certain." (*James* v. *Rutlech*, 4 Coke, 17.)

"No writing whatever is to be esteemed a libel, unless it reflects upon some particular person." (Hawk P. C., ch. 73, sec. 9; Townshend on Slander and Libel, sec. 131.)

The circular in no way describes or identifies plaintiff, and therefore, the language not being applicable to him, the averment or innuendo in the declaration, to the effect that people so understood it, can not make it so. (*Solomon* v. *Lawson*, 8 Q. B., 823; *Dottarer* v. *Bushey*, 16 Penn., 208; *Sanderson* v. *Caldwell*, 45 N. Y., 398.)

He can not show the application of the language to himself by innuendo alone, as he has attempted to do in this case. (*Wilson* v. *Hamilton*, 9 Rich. Law (So. Car.), 382; *Maxwell* v. *Allison*, 11 S. & R., 343; *Tyler* v. *Tillotson*, 2 Hill, 507.)

The declaration is bad in that the matter set out, which is alleged to be defamatory, does not mention or refer to plaintiff as a person or one of a class.

Plaintiff does not allege that he was the only attorney prosecuting such claims.

If the words apply to a class, and do not refer specially to any particular party they must be capable of bearing such special application, and there must be an averment of extraneous facts, showing that such person

was expressly referred to, or the action can not be maintained. (Odgers on Libel and Slander, *127; Newell on Defamation, Slander, and Libel, p. 257, § 20.)

VIII.

CAUSING BREACH OF CONTRACT.

While the case of *Angle* v. *Chicago, St. Paul, M. & O. Ry. Co.* (151 U. S., 1) holds that one is liable who maliciously interferes in a contract between two parties and induces one of them to break his contract, to the injury of the other, yet it was based on a state of facts where the party sued used unlawful means and did wrongful acts, which caused the breach.

The court quotes from *Bowen* v. *Hall*, as follows (p. 14):

> That wherever a man does an act which in law and in fact is *a wrongful act*, and such an act as may, as a natural and probable consequence of it, produce injury to another, and which in the particular case does produce such an injury, an action on the case will lie.

In this case, admitting malice and intent to injure, yet the means used were all lawful, viz, the sending of drafts, the publishing of acts of Congress, the expression of opinion as to the causes which led to their enactment, and stating the course pursued in his department in adjusting claims.

It is also to be remarked that, in respect of this last means used, and which is the only one of which there could be any doubt as to the lawfulness, the declaration,

as shown heretofore, did not aver that the statements were false in any of the cases in which damages accrued, or that defendant knew that the statements were false.

If lawful acts be done by an officer, his motives can not be inquired into for founding an action against him for malice. (Throop on Public Officers, §. 567.)

All that was done was by the head of an Executive Department, and connected with matters in the line of his duty. The statutes imposed upon him a discretionary duty of examining and adjusting these claims, and allowed no appeal from his action. He was a *quasi* judge. In the circular which accompanied his action he set forth and explained the reasons for his action and the methods by which he reached this result. While it is admitted that a judge of limited jurisdiction may be liable, if he acts outside of his duties and acts maliciously, nevertheless it is insisted that where what was done was directly connected with the administration of the affairs intrusted to him, and the communications pertained to them, and to them alone, and where, as in this case, no reference was made to any person, and the communication was addressed only to the parties whose claims had been readjusted, no liability arises by reason of such action in favor of a third party, who may be incidentally injured.

JUDSON HARMON,
Attorney-General.
J. M. DICKINSON,
Assistant Attorney-General.

Office Supreme Court, U. S.
FILED.
NOV 21 1895
JAMES H. McKENNEY,
CLERK

Supreme Court of the United States.

October Term, 1895.

HARVEY SPALDING, *Plaintiff in Error*,
v.
WILLIAM F. VILAS, *Defendant in Error*. } No. 81.

In Error to the Supreme Court of the District of Columbia.

Reply to Brief for William F. Vilas.

STATEMENT.

The brief for the defendant on pages 2 to 4 contains three statutes ou tof which the controversy for the re-statement and payment of salary accounts of postmasters arose. On pages 4 to 8 are printed five statutes enacted to secure the re-statement of accounts contended for and providing for the payment of the same. Besides these laws, two other laws were enacted providing for the payment of such re-stated salary accounts of postmasters. One of these laws was enacted on the 3d of March, 1885, and is printed on page 476 of the 23d statutes. It is in the following words: "For compensation of postmasters re-adjusted under act of March 3, 1883, payable from deficiency in postal revenues 1882 and prior years, including all such claims re-adjusted up to February, 1885, $178,481.23; provided that the said sums herein provided for and allowed under said act approved March 3, 1883, shall be paid directly to the parties named in said EXECUTIVE DOCUMENT, number one hundred and fifty-three."

The other law will be found on page 601 of the 25th statutes, enacted on the 19th of October, 1888, and reads as follows:

"Section 6. That for the payment of the claims certified to be due by the auditor of the Treasury for the Post Office Department under the act approved March 3, 1883, or under appropriations the balance of which have been exhausted or carried to the surplus fund, under the provisions of Section 5 of the act of June 20, 1874, being for the service of the fiscal year 1886 and prior years, and which have been

certified to Congress under Section 2 of the act of July 7, 1884, as fully set forth in Senate Executive Document, number two hundred and fifty-three, Fiftieth Congress, first session, there is appropriated as follows: For compensation of postmasters re-adjusted under act of March 3, 1883, payable from deficiency from postal revenue, 1886, and prior years, $77,038.42."

A summary statement is made in the report of the Postmaster-General for 1889, on page 187, of all the appropriations made to pay the re-stated salary accounts of postmasters had pursuant to the act of 1883 and the act of 1866, the said statement reads as follows: "Appropriations to pay these claims have been made by the Congress as follows:

Under the act approved—

July 7, 1884	$45,213.80
March 3, 1885	178,281.23
August 4, 1886	380,209.46
February 1, 1888	160,286.05
March 30, 1888	380,321.04
October 19, 1888	77,038.42
Total	$1,221,350.40

The act of March 3, 1883, printed on pages 4 and 5 of the brief for defendant, is in terms a mandate to enforce the act of June 12, 1866, which is printed at the top of page 4 of the brief. The latter act is a mandate addressed to the Postmaster-General, requiring him to "re-adjust," which is but another word for "re-state," the salary account of every postmaster paid less than $2,000 a year whose returns show that the salary allowed under the act of 1864 to be 10 per cent. less than IT WOULD BE ON THE BASIS OF COMMISSIONS UNDER THE ACT OF 1854.

The act of 1854 is printed on pages 2 and 3 of the brief for defendant, so that under these two acts of 1854 and 1866 there can be no mistake as to the nature of the claims, thousands of which as stated in the declaration were placed in the plaintiff's hands for collection by duly executed powers of attorney and with contracts for fees. There is therefore no such thing possible as questions of valid and invalid claims discussed at such length in the brief for defendant. All the claims were claims for re-statement of salary accounts and payment of such accounts. And when this court in January, 1878, decided that payment of such accounts could not be enforced until they were re-stated by the Postmaster-General and that if he refused to re-state them he might be constrained by mandamus to do so, a mandamus for all the cases in the only way possible was asked for and secured at the hands of Congress and is contained in the act of March 3, 1883. Every subsequent act ap-

propriating money to pay the re-stated accounts is in execution of the act of June 12, 1866, as well as the act of 1883. So that the whole service performed by the plaintiff from first to last was strictly in the line of his professional duty and in the discharge of his obligations to his clients. That these duties were absolutely indispensable to the due execution of the act of 1866 in respect to the re-statement and payment of his clients' salary accounts is conclusively shown by the fact that such re-statement and re-payment was successfully resisted from 1866 till 1886, when the defendant was in office, a period of twenty years.

NOTE.—That contracts procured to be broken can not be enforced at law is no defense in such cases (Benton *v.* Pratt, 2 Wend., 385, cited in Angle *v.* Chicago and St. P. etc., Railway, 151 U. S., 1).

I.

THE FOREGOING CONSIDERATIONS DISPOSE OF ALL THE CRITICISMS MADE IN DEFENDANT'S BRIEF IN RESPECT TO THE NATURE OF THE CONTRACTS AND POWERS OF ATTORNEY AND IN RESPECT TO THE VIOLATION OF PUBLIC POLICY IN SECURING THE LEGISLATIVE MANDATE TO ENFORCE THE RE-STATEMENT OF PLAINTIFF'S CLIENTS' ACCOUNTS AND IN SECURING APPROPRIATIONS TO PAY SUCH RESTATED ACCOUNTS.

There is no foundation whatever for the assumption in the brief for defendant that the contracts were to collect under the act of 1866 and did not provide for procuring legislation, for it is shown that the only method by which he could serve his clients was to secure first the legislative mandate and afterwards the appropriations to pay the accounts. The assumption that any of the contracts were limited to what was done in the first stage of the contention at the end of which the application for re-adjustment of accounts was denied by the department is without warrant of any fact, for it is manifest that if such applications were denied to his clients in violation of the act of June 12, 1866, it would have been the duty of the attorney to have invoked the aid of competent tribunals to enforce the re-statement of the accounts in conformity to that act, and this was done.

II.

ORIGIN OF CONTROVERSY WITH THE DEFENDANT.

The plaintiff's statement as to this in the declaration is commented upon on page 12 of the defendant's brief. The act of June 12, 1866, printed on page 4 of the brief, shows that the defendant and his predecessors could take no step whatever under the act of

March 3, 1883, in re-stating the salary accounts pursuant to the act of 1866 except to re-state the same on the returns themselves, because all such salary accounts theretofore allowed had been assigned and afterwards stated under the act of 1864 on the prior returns. Any step taken, therefore, under the act of 1866 or under the act of 1883 compelled a re-statement of the accounts on the returns themselves. Therefore the facts stated in the declaration numbered 10 in defendant's brief on page 12 that a large number of valid claims were prior to March, 1885, repudiated by the Post Office Department, plainly implies that the Postmaster-General, using his power of control over the re-statement of such accounts, repudiated such accounts after they were re-stated in accordance with the law by refusing to report the same to the auditor for settlement. He could not, if he would, re-state the accounts in any other way than upon the returns themselves without a plain violation of law, but he could repudiate and defeat the payment of such re-stated accounts by refusing to report the same.

So the plain implication is from the facts stated and numbered 11 in the declaration and also in number 12, printed on page 12 of brief for defendant that the plaintiff endeavored to have the defendant comply with the law by reporting for payment the re-stated accounts made but withheld by his immediate predecessor and also to proceed and report all such re-stated accounts in accordance with the law in order that they might be settled and paid.

It will be noted that the defendant disbursed the appropriation of $178,000 of March 3, 1885, before he made the attack upon plaintiff herein set forth.

It is manifest from the declaration itself and from the law that out of this controversy arose the malicious hostility of the defendant to the plaintiff. Without doubt this reached the highest possible point because to deny the report of such cases under such circumstances carried with it a legal liability on the part of the defendant to the clients of plaintiff, who sufferred a loss by it. The proviso of Section 8 of the act of August 4, 1886, printed on pages 6, 7 an 8 of the brief for defendant, shows what appears to be an anomaly in legislation which is expressed in the following words: "And no action or suit shall be maintainable in any court against any officer of the United States by reason of his action in reviewing or refusing to review or allowing or disallowing any application for re-adjustment of any such salary." At the time this legislation was secured the defendant was the only officer having any authority in such cases and he was the only officer to be protected from suits by this provision of law sought and secured at that time.

It is plain that no such legislation would have been sought for unless the applicant believed he was in great need of it, and it is

manifest that this proviso was procured by him. It is equally plain that when he obtained this legislation he must have deemed himself entirely secure if he had refused by wholesale to report the re-stated accounts of plaintiff's clients for settlement.

III.

As to the Resulting Malice of Defendant Toward the Plaintiff.

It is to be noted first that there is no direction contained in the six appropriations to pay the re-stated accounts directly to the claimants excepting the act of March 3, 1885, and in the act of August 4, 1886. It is also to be noticed in respect to these provisions that they did not and could not change the law upon that subject, for no debt of the United States to any citizen can be paid otherwise than directly to the original claimant. It can not be paid to the assignee of a claimant. Consequently, these peculiar provisions, one of which was, without doubt, obtained by the defendant himself, could not take away the right of a claimant to authorize his attorney by a power of attorney to receive and transmit to him the warrant issued in settlement of the debt due him. In place of this the defendant repudiated and ignored the authority of the plaintiff duly given him by each of his clients to receive and transmit the warrant to him. But this is a mere incident and in no sense constitutes the conclusive proof and demonstration of the malicious acts of defendant.

When a warrant is sent to a citizen by an officer of the Government in liquidation of a debt the act of sending makes an end of the transaction. The only thing which has been deemed permissable and proper from the beginning of the Government to the date of the issue of the circular by defendant complained of is a simple statement with the warrant of its purpose or of the debt which it pays with sometimes some instructions to have the warrant paid immediately and of the necessity of making the endorsement accurately. The declaration shows that the defendant sent four thousand circulars, one to each of four thousand of plaintiff's clients, between September, 1886, and January 17, 1888, during which time the appropriation contained in the act of August 4, 1886, of three hundred and eighty thousand two hundred and nine dollars and forty-six cents was disbursed or paid out in satisfaction of the re-stated salary accounts of postmasters. If this appropriation be divided equally between the four thousand clients of plaintiff it would give to each about ninety-five dollars, so that it would seem if there were any among these recipients of warrants who were not clients of the plaintiff the average amount received by each claimant was less than ninety-five dollars.

Every power of attorney of every one of these clients in order to constitute the plaintiff attorney of such client had to be lodged with the Postmaster-General. It is consequently absurd to impute to the declaration any defect in respect to the allegation that it is not sufficiently pleaded, that the defendant had knowledge of the fact that the persons to whom he sent this circular were the plaintiff's clients. The plaintiff could present no claim to the Postmaster-General of a client pursuant to the act of 1883 and 1866 without communicating to the Postmaster-General the information that the person was his client, so that when he sent these four thousand circulars to four thousand of plaintiff's clients he knew that they were the clients of plaintiff and that plaintiff had a contract with each of them for the payment of fees upon effecting the collection. The declaration alleges the powers of attorney were lodged with the defendant.

For the first time in the history of the Government a circular of two pages of information and instruction was sent to recipients of warrants issued in the payment of debts due from the Government when the defendant prepared and sent this circular to the plaintiff's clients. For the first time in the history of the Government an officer of the Government then undertook to control the disposition of money transmitted to a public creditor in a warrant after the creditor received the money.

It is stated in the declaration that the defendant, among other things, endeavoring to obtain legislation by Congress to impair and destroy rights of the plaintiff under the said contracts in which, however, he failed, but to further harrass the plaintiff, amongst other things, undertook to induce the clients of the plaintiff to repudiate the contracts they had made.

This statement of a fact shows what the defendant intended to do when he secured the provisos of section 8 of the act of August 8, 1886, for in the month following he printed the whole section in the circular he sent to the plaintiff's clients.

This circular was an instruction by the defendant to the clients of plaintiff to disregard and refuse payment of the fees they had contracted to pay the plaintiff. On the 30th page of the brief for defendant it is stated as follows: "In this case admitting malice and intent to injure, yet the means used were all lawful, viz: the sending of drafts, the publishing of acts of Congress, the expression of opinion as to the causes which lead to their enactment and stating the course pursued in his department in adjusting claims."

The declaration explicitly states that said circular was maliciously intended to cause the claimants to believe that the plaintiff's claim for valuable services was false and fraudulent; that the reference to section 3477 in said circular and the printing of the whole of said section was for the malicious purpose only of causing the

claimants to believe that the said contracts for fees before suggested in said circular were null and void and that the same was intended to deceive the claimants and to thereby induce them to repudiate the contracts they had made with the plaintiff AND THEY UNDERSTOOD SAID CIRCULAR AS MEANT AND INTENDED AS HEREIN STATED OF AND CONCERNING THE PLAINTIFF.

The fact alleged is therefore that this circular was intended as an instruction of the defendant to plaintiff's clients to break their fee contracts.

That this was done under an attempt to cover the crime by two statutes printed in the circular does not in any degree relieve the act of its criminal character. In fact the crime is thereby made more conspicuous in that it attempts to make a weapon of two acts of Congress against the property of the complainant when such acts of Congress constitute no attack whatever upon such property or upon the property of anybody.

He who strikes to destroy character, he who strikes to destroy property of another, and he who strikes to destroy life of another are all guilty of kindred wrongs and all such wrong doer habitually pre-arrange covers for their wrongs in order to escape punishment. The plans they make in advance of the wrong are often the means in aiding in their conviction. It is so in the case at bar. The circular itself convicts the author because it has no purpose and no function to perform except one only, namely, a covert instruction of the defendant pretending to act under authority of Congress to plaintiff's clients to break their contracts.

Such an instruction as this of necessity, under the circumstances, amounts to a libel upon the plaintiff because it falsely represents that he has earned no fees when he claims fees and it falsely represents that the accounts are paid by the spontaneous action of the defendant, when in fact his re-statement of the accounts is made under compulsion as the result of proceedings conducted by the plaintiff.

The defendant had no authority of law whatever for sending this circular to plaintiff's clients. The utmost that he could claim under the proviso of the act of August 4, 1886, which he himself obtained, was to mail the warrant to the address of the payee. Even this may be doubted, for the language of the proviso scarcely expresses such an intent of Congress. It simply directs the warrants to be transmitted to the persons entitled thereto. Under this provision an attorney holding a power of attorney from the payee to receive the draft would seem to be a person entitled thereto within the meaning of this act. But if he had that authority he exceeded it when he enclosed a circular containing instructions not about the endorsement or payment of the warrant, but about the disposition that payee should make of the money.

Under such circumstances the circular convicts its author at once not only of an unlawful act but a malicious act.

IV.

Looking Through the Veil Which Softens the Outlines but does not Conceal the Form of the Transaction.

On the 20th page of the brief for defendant is set forth a version of the transaction as seen by the defendant through the veil.

There is no veil to look through in order to see this transaction. The statute of 1866 gave an absolute right to many thousands of postmasters to have their salary accounts re-stated and paid. It imposed on the Postmaster-General the supreme trust duty to re-state these accounts for payment. This statute giving these property rights to these postmasters was repudiated. A controversy arose to enforce the statute, and in order to enforce the statute the Postmaster-General had to be compelled to perform the duty imposed upon him by the act of 1866. The thousands of postmasters entitled employed the plaintiff as their attorney. He devoted himself for years to enforce the law and to compel the Postmaster-General to take action. He did finally compel the Postmaster-General to take action. That officer being compelled to take this action and without doubt greatly influenced by disaffected subordinates became angry. Thousands of accounts which were re-stated according to law were retained in the office of Postmaster-General, and by this course thousands of accounts thus re-stated were not paid when the defendant came into office. When the defendant came into office demand was made upon him to report these unreported cases for payment. Without doubt he believed that the refusal to report them involved a personal liability on his part. He sought and obtained from Congress indemnity against that liability and thereby he became perfectly self-assured as to his power and of his ability in the exercise of that power to destroy by wholesale the property of the plaintiff which existed in the contracts he had made with these clients. This unlawful attempt of his is now before this court to be considered and passed upon by this court under the settled rules of law which control such cases.

From first to last the plaintiff, adhering strictly to his professional duties, proceeded in one straight line, namely, to enforce the property rights of his clients under the act of 1866. On his part there were no divergences whatever. Whatever divergences were made, if any were made, were made by the defendant and by the immediate officer who preceded him, because all the public orders of his predecessors direct the execution of the two acts of

1866 and 1883 according to their plain and only terms. If the defendant attempted to evade this it of necessity required him to diverge from the law. In the legislation which he secured on the 4th of August, 1886, printed on pages 6, 7 and 8, such a divergence by him is clearly implied, for amongst other extraordinary things he asks Congress that no suit shall be maintainable against him for reviewing and for allowing claims. No stranger legislation than this appears in the statute books. If he had followed the law in allowing claims why should he ask Congress to prohibit suits against him for such action?

Upon such facts as these it seems quite out of place that in defendant's brief the plaintiff should be criticized for establishing what the brief calls a regular business of stirring up claims against the Government or that while he was employed to collect claims under an existing law he expanded the scope of his activities and brought about the passage of several acts of Congress. It is plain that he never brought about the act of Congress contained in section 8 of the act of August 4, 1886.

It has been made apparent that the officers of the Post Office Department resisted a law for twenty years devolving on the Postmaster-General the supreme duty of re-adjusting salary accounts of postmasters. How can the officers of that Department escape the stigma of the betrayal of that great trust by charging the complainant with harassing the Department officers so as to arouse their greatest hostility.

The eulogy bestowed on the defendant at the bottom of page 20 for the skill he displayed in instructing plaintiff's clients to repudiate their contracts with him by not mentioning plaintiff's name nor using any apt language in identifying him and printing certain laws in the circular containing the instructions admit of no comment.

Replying to all of the criticisms made in defendant's brief attempting to show defects in the declaration it may be said that it would be difficult to employ language that would more clearly describe the transaction on the part of the defendant in which he is clearly shown to have attempted to destroy plaintiff's property rights contained in four thousand contracts with clients to whom he deliberately sent instructions for that purpose alone. It was an attack on the plaintiff's property and on his business and on his character. It was a combined attack of a great officer using the great power of his office for that unlawful purpose.

W. WILLOUGHBY.